

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: November 9, 2017

524439

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THE PEOPLE OF THE STATE OF  
NEW YORK ex rel. SIDIKI  
WEAY,

Appellant,

v

MEMORANDUM AND ORDER

DANIEL MARTUSCELLO, as  
Superintendent of Coxsackie  
Correctional Facility,  
Respondent.

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Calendar Date: September 19, 2017

Before: Peters, P.J., Egan Jr., Clark, Mulvey and Pritzker, JJ.

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Sidiki Weay, Coxsackie, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Frank Brady of counsel), for respondent.

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Appeal from a judgment of the Supreme Court (Fisher, J.), entered December 15, 2016 in Greene County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 70, without a hearing.

In 2001, petitioner was convicted of, among other things, murder in the second degree and was sentenced to a prison term of 22 years to life. The judgment of conviction was affirmed upon appeal (People v Weay, 2 AD3d 468 [2003], lv denied 2 NY3d 808 [2004]), and his subsequent motion pursuant to CPLR article 440 was denied (People v Weay, 54 AD3d 695 [2008], lv denied 11 NY3d 858 [2008]). Petitioner commenced this CPLR article 70 proceeding for a writ of habeas corpus asserting that he is

entitled to immediate release because the evidence adduced at trial was legally insufficient. Supreme Court dismissed the petition, and this appeal ensued.

We affirm. "[H]abeas corpus relief is not an appropriate remedy for resolving claims that could have been . . . raised on direct appeal or in a postconviction motion" (People ex rel. Lainfiesta v Lape, 83 AD3d 1303, 1303 [2011], lv denied 17 NY3d 708 [2011]; see People ex rel. Littlejohn v Griffin, 133 AD3d 996, 997 [2015], lv denied 27 NY3d 902 [2016]). Here, petitioner unsuccessfully raised the issue of legal sufficiency on direct appeal and in his subsequent CPL article 440 motion. Petitioner also raised the issue in his federal habeas corpus application, which was denied (Weay v Haponick, 2012 WL 70584, \*4-7, 2012 US Dist LEXIS 1403, \*11-19 [ED NY, Jan. 5, 2012, No. 05-CV-3866 (CBA)]). Furthermore, even if petitioner's argument was found to be meritorious, the most he would be entitled to is a new trial, not immediate release from detention (see People ex rel. Brown v Keane, 284 AD2d 813, 813 [2001]). In view of the foregoing, and finding no extraordinary circumstances warranting a departure from traditional orderly procedures, habeas corpus relief is unavailable (see People ex rel. Collins v Billnier, 87 AD3d 1208, 1208 [2011], lv denied 18 NY3d 802 [2011]; People ex rel. Richards v Yelich, 87 AD3d 764, 765 [2011], appeal dismissed and lv denied 17 NY3d 922 [2011]; People ex rel. Brown v Keane, 284 AD2d at 813).

Peters, P.J., Egan Jr., Clark, Mulvey and Pritzker, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:



Robert D. Mayberger  
Clerk of the Court